No. 8 Original

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

STATE OF ARIZONA,

Complainant

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants

THE UNITED STATES OF AMERICA AND STATE OF NEVADA,

Interveners

STATE OF UTAH AND STATE OF NEW MEXICO,

Impleaded Defendants

PETITION OF INTERVENTION ON BEHALF OF THE FORT MOJAVE TRIBE, THE QUECHAN TRIBE OF THE FORT YUMA INDIAN RESERVATION, THE CHEMEHUEVI INDIAN TRIBE, THE COLORADO RIVER INDIAN TRIBES AND THE CONFEDERATION OF INDIAN TRIBES OF THE COLORADO RIVER; AND THE NATIONAL CONGRESS OF AMERICAN INDIANS AS AMICUS CURIAE

RAYMOND C. SIMPSON, Attorney for Petitioners, the Fort Mojave Tribe, the Quechan Tribe of the Fort Yuma Indian Reservation, the Chemehuevi Indian Tribe, the Colorado River Indian Tribes and the Confederation of Indian Tribes of the Colorado River; and the National Congress of American Indians as Amicus Curiae

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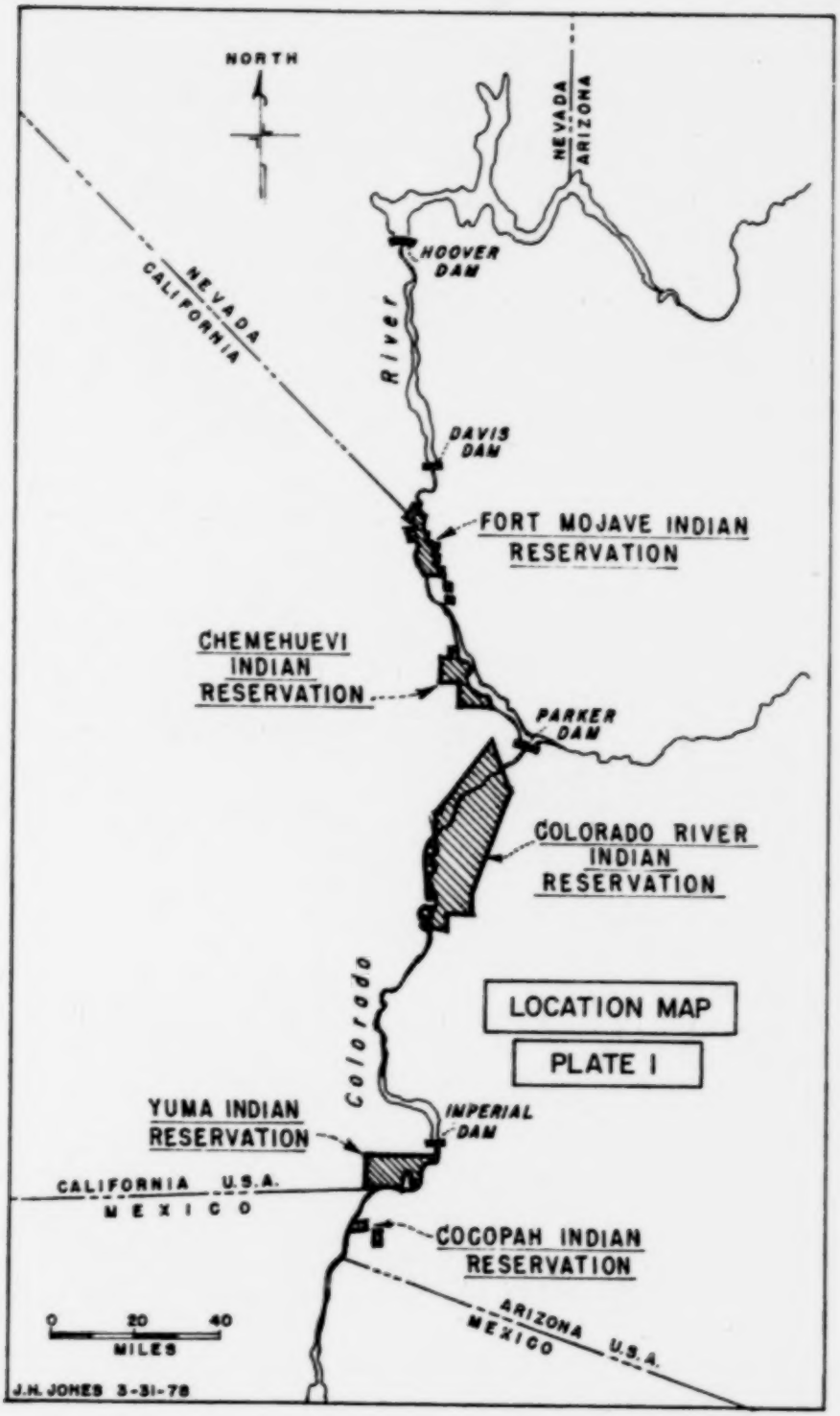
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STATE OF CALIFORNIA, ET AL.,

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UNITED STATES OF AMERICA,

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PETITION OF INTERVENTION ON BEHALF OF THE FORT MOJAVE TRIBE, THE QUECHAN TRIBE OF THE FORT YUMA INDIAN RESERVATION, THE CHEMEHUEVI INDIAN TRIBE, THE COLORADO RIVER INDIAN TRIBES,[1] AND THE CONFEDERATION OF INDIAN TRIBES OF THE COLORADO RIVER;[2] AND THE NATIONAL CONGRESS OF AMERICAN INDIANS AS AMICUS CURIAE

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[1] It is extremely important to note that the original movants included only the Fort Mojave Tribe, the Quechan Tribe and the Chemehuevi Tribe. The Colorado River Tribes of the Colorado River Indian Reservation, States of Arizona and California, have joined the aforesaid Tribes as petitioners. That joinder, in this Petition, brings before the Court the vast proportion of "present perfected rights" as they pertain to the Indian irrigable acreage on the Lower Colorado River. Reference is made to p. 11, para. XXI of the December 23, 1977 Motion. There the claims of the Colorado River Tribes, to the extent those claims were known on December 23, 1977, were set forth. As there noted, the Colorado River Tribes were not movants.

[2] The Confederation of Indian Tribes of the Colorado River is a non-profit corporation organized pursuant to the laws of the State of California. The Fort Mojave Tribe, the Chemehuevi Tribe, the

Petition of Intervention [3] on behalf of the Fort Mojave Tribe, the Chemehuevi Tribe, the Quechan Tribe and the Colorado River Tribes, together with the Confederation and the National Congress of American Indians, *amicus curiae*, and by leave first having had and obtained, file this Petition in the above-entitled cause, and allege and declare as follows.

I.

On December 23, 1977, the Fort Mojave Tribe, the Chemehuevi Tribe and the Quechan Tribe of the Fort Yuma Indian Reservation filed with the Court a motion petitioning to intervene in this case. Likewise filed on the same date was a brief in support of that motion. Both the motion and brief are incorporated into this Petition and are made a part of it by reference. In the motion, the movants alluded to the fact that time constraints prevented the filing at that time of a full Petition of Intervention. The Tribes requested sixty (60) days after the motion had been granted to file the full Petition.

II.

By a letter dated February 23, 1978, the Clerk of the Court advised the Tribes as follows:

Colorado River Indian Tribes, the Quechan Tribe and the Cocopah Tribe are all members of that non-profit corporation. The Confederation makes no claims to "present perfected rights" in this Petition. It is, however, a corporate entity through which the Tribes function. The Cocopah Tribe has refrained from joining in the Petition.

[3] Although this pleading is entitled as a "Petition of Intervention," the Tribes are already parties by reason of the petition of the United States which was for itself and on behalf of the Tribes. See Arizona v. California, 373 U.S. 546, 595 (1963) which states: "The government, on behalf of the five Indian Reservations in Arizona, California, and Nevada asserted rights to water in the mainstream of the Colorado River [citations omitted]." Accordingly, the Tribes now in essence seek to be recognized not only as real parties in interest, but as parties litigant represented by their own counsel who will be effective and free from conflicts of interest.

"In connection with the motion of the Fort Mojave Indian Tribe, et al., for leave to intervene as indispensable parties, the Court has instructed this office to direct the parties in the above case as follows:

"1. That the Fort Mojave Indian Tribe, et al., file a full petition of intervention within 45 days from the date of this letter."

III.

Substance of the Tribes' motion of December 23, 1977, is as follows:

A. The subject matter or res of the case of *Arizona* v. *California* is the respective "present perfected rights" to the use of water of the various principal claimants in and to the Lower Colorado River. The Tribes are owners of full equitable title in and to "present perfected rights" and refer, in that connection, to a portion but far from all of the "present perfected rights" to which the Tribes are legally entitled, all as set forth in the Court's Decree entered March 9, 1964, Article II, D(1)-(5).[4]

B. The Tribes are the real parties in interest in regard to their rights to the use of water in the Lower Colorado River asserting full equitable title in and to those rights.

C. The interest of the United States of America in the Tribes' rights to the use of water in that stream is that of trustee for the Tribes. The trustee is the holder of the naked legal title to those "present perfected rights." As trustee for the Tribes, the United States has the obligation to represent the Tribes before the Court and to preserve, protect and assist the Tribes in the full utilization of those rights to the use of water.

D. As averred in the motion filed by the Tribes, the Secretary of the Interior, as principal agent of the trustee

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[4] Motion, pg. 2, para. III.

United States, is unable to fulfill the obligations of the trustee to the Tribes because that official has responsibilities which are so disparate and conflicting that the Secretary of the Interior, at the time of and throughout the preparation of trial and *Arizona* v. *California*, and down to the moment of the filing of this Petition, has been unable to properly perform the responsibilities of the trustee for the Tribes in regard to their rights to the use of water. As a consequence of that failure, there has been and will continue to be irreparable damage to the Tribes.[5]

E. The Department of Justice, acting through the Solicitor General, purports to represent the Secretary of the Interior and all of the disparate and conflicting interests of the Department of Interior including the adverse claims of the Tribes with those of the Bureau of Reclamation and its contracting parties, defendants in this cause.[6] Since the debasement of those rights, all as chronicled in the brief in support of the motion of December 23, 1977, the Justice Department has in the past and is now primarily representing the adverse claims in the Lower Colorado River of the non-Indian projects and uses, all of which are opposed to the claims of the petitioning Tribes.

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[5] *Ibid.*, pp. 2-3 para. IV; see Brief, pp. 1 *et seq.* and citations relative to the all-pervasive conflicts of interest within the Interior and Justice Departments.

[6] See in that connection the listing of adverse claims in the Petition of Intervention on behalf of the United States where it petitioned the Court to become a party to the case, pp. 9-22. See in particular the claims of the Indians as set forth in the original petition, pp. 22-23, paras. XXV, XXVI, XXVII. See also review of the original petition filed in the case of Arizona v. California by the United States in which there was asserted a strong claim on behalf of the Tribes, Petitioners here, and by reason of political pressure that strong statement was withdrawn and a much weaker claim on behalf of the Tribes was set forth, Brief, pp. 5-9.

F. The Final Decree provides in part as follows:

> ". . . the States of Arizona, California, and Nevada shall furnish to this Court and to the Secretary of the Interior a list of the present perfected rights. . . . "The Secretary of the Interior shall supply similar information, within a similar period of time, with respect to the claims of the United States to present perfected rights within each State. . . ."[7]

G. Although the Final Decree provided that the list of "present perfected rights" would be submitted to the Court at the end of a two-year period, that list has yet to be formulated and filed with the Court. The protracted delay of thirteen (13) years in resolving the issue of "present perfected rights" of the parties in *Arizona* v. *California* has been caused very largely, if not entirely, by the conflicts of interest of the Secretary of the Interior who administers the rights of the adverse claims of the Indians and non-Indians.[8]

H. Throughout that protracted period of thirteen (13) years, there have been continuous negotiations among the officials of the Department of Interior, the Department of Justice, the State of Arizona, the California Defendants and the State of Nevada. Those negotiations have been unsuccessful primarily due to the fact that there have been disputes in connection with the nature, right and extent of the claims of the Indians and the parties adverse to the Indians, including but not limited to those non-Indian parties who are likewise represented by the Secretary of the Interior and the Department of Justice.

I. All of the negotiations to resolve the conflicts relative to the "present perfected rights" among the various

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[7] Arizona v. California, *et al.*, 376 U.S. 340, 351-2 (1964), amended 1966, 283 U.S. 268 (1966).

[8] See Motion, pg. 4, para. VI, Imperative Need To Have Resolved All Issues In Arizona v. California.

claimants to waters in the Lower Colorado River among the officials of the Department of Interior and the Department of Justice, the State of Arizona, the California Defendants and the State of Nevada have been conducted without the participation, knowledge, consent or acquiescence of the Tribes or their representatives.[9]

J. As a direct and immediate result of the protracted negotiations among the officials of the Department of Interior and the Department of Justice, the State of Arizona, the California Defendants and the Intervener State of Nevada, without participation of the Tribes, there was filed May 3, 1977, by the aforesaid State of Arizona, *et al.*, a "Joint Motion for a Determination of Present Perfected Rights and the Entry of a Proposed Supplemental Decree; and Memorandum of Proposed Supplemental Decree."

K. Among other things and contrary to known facts, which the Tribes are prepared to contravene if permitted to do so, the Joint Movants allege "present perfected rights" as follows: [10]

> "B. Water District and Projects Present Perfected Rights
>
> "26)
>
> "The Palo Verde Irrigation District in annual quantities not to exceed (i) 219,780 acre-feet of diversions . . . to supply the consumptive use required for irrigation of 33,604 acres . . . with a priority date of 1877."

The Tribes specifically deny each and every allegation relative to the claimed quantities of water, acres and

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[9] See Appendix A of this Petition. Affidavit of Chairman Llewellyn Barrackman of the Fort Mojave Tribal Council, Fort Mojave Indian Tribe, Chairman of the Confederation of Indian Tribes of the Colorado River.

[10] Joint Motion, pp. 11-12, II California.

priority date, as set forth on behalf of the Palo Verde Irrigation District.

L. Continuing, without basis in fact, the Joint Motion contains this statement:

> "The Imperial Irrigation District in annual quantities not to exceed (i) 2,600,000 acre-feet of diversions from the mainstream . . . to supply the consumptive use required for irrigation of 424,145 acres . . . with a priority date of 1901."

The Tribes specifically deny each and every allegation relative to the claimed quantities of water, acres and priority date, as set forth on behalf of the Imperial Irrigation District.

M. The Joint Motion continues:

> "The Reservation Division, Yuma Project, California (non-Indian portion) in annual quantities not to exceed (i) 38,270 acre-feet of diversions from the mainstream . . . to supply the consumptive use required for irrigation of 6,294 acres . . . with a priority date of July 8, 1905."

The Tribes specifically deny each and every allegation relative to the claimed quantities of water, acres and priority date, as set forth on behalf of the Yuma Project.

N. On page 6 of the Joint Motion the following is stated: [11]

> "B. Water Projects Present Perfected Rights
>
> "(4) The Valley Division, Yuma Project in annual quantities not to exceed (i) 254,200 acre-feet of diversions from the mainstream . . . to supply the consumptive use required for irrigation of 43,562 acres . . . with a priority date of 1901."

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[11] Joint Motion, pp. 6 *et seq.*

The Tribes specifically deny each and every allegation relative to the claimed quantities of water, acres and priority date, as set forth on behalf of the Yuma Project.

O. Continuing, the Joint Motion contains this statement:

> "(5) The Yuma Auxiliary Project, Unit B in annual quantities not to exceed (i) 6,800 acre-feet of diversions from the mainstream . . . to supply the consumptive use required for irrigation of 1,225 acres . . . with a priority date of July 8, 1905."

The Tribes specifically deny each and every allegation relative to the claimed quantities of water, acres and priority date, as set forth on behalf of the Yuma Auxiliary Project, Unit B.

P. The Joint Motion continues on page 7 as follows:

> "(6) The North Gila Valley Unit, Yuma Mesa Division, Gila Project in annual quantities not to exceed (i) 24,500 acre-feet of diversions from the mainstream . . . to supply the consumptive use required for irrigation of 4,030 acres . . . with a priority date of July 8, 1905."

The Tribes specifically deny each and every allegation relative to the claimed quantities of water, acres and priority date, as set forth on behalf of the North Gila Valley Unit, Yuma Mesa Division, Gila Project.

Q. There is alleged in the Joint Motion "Miscellaneous Present Perfected Rights" in the State of Arizona.[12] The Tribes deny each and every allegation contained in the Joint Motion relative to the Miscellaneous Rights set forth by the State of Arizona and, if afforded an opportunity, will prove that they are not correct either as to quantities of water or dates of priority.

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[12] Joint Motion, I Arizona, pp. 6-10, C. Miscellaneous Present Perfected Rights.

R. The Joint Motion likewise sets forth "Miscellaneous Present Perfected Rights" in the State of California.[13] The Tribes deny each and every allegation contained in the Joint Motion relative to the Miscellaneous Rights set forth by the State of California and, if afforded an opportunity, will prove that they are not correct either as to quantities of water or dates of priority.

S. Rather than denying the spurious claims as to "present perfected rights," as set forth in the Joint Motion, the United States in its response ". . . to the Joint Motion for a Determination of Present Perfected Rights and Entry of a Supplemental Decree," said this among other things: ". . . the parties have now reached substantial accord on many points. . . ." including the grossly inflated claimed "present perfected rights" as asserted by the States in their Joint Motion.[14]

T. In the "Memorandum for the United States in Opposition" to the Tribes' motion filed December 23, 1977, the United States, relative to the totally unsubstantiated claims of the States of "present perfected rights," all as set forth above, says this:

> "The Tribes deny (Mot. 17) the validity of the State parties' claims to present perfected rights. We do not agree with the Tribes' allegations that the dates and amounts are patently false. . . ." [15]

U. Irrespective of the acceptance—or acquiescence—by the United States of the grossly in error claims for "present perfected rights," as set forth by the States in their

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[13] *Ibid.*, II California, pp. 11-18, C. Miscellaneous Present Perfected Rights.

[14] Response of the United States, November 10, 1977, p. 1.

[15] Memorandum for the United States in Opposition, p. 11, para. V, Tribal Objections to Present Perfected Rights Claimed by the State parties.

Joint Motion, the Tribes reiterate, reaffirm and will prove, if permitted to do so, that:

(1) The "present perfected rights," as contained in the Joint Motion of the States, are unconscionably inflated far beyond the realm of reality.

(2) The Lower Colorado River has been over-appropriated to the extent that it is now unable to supply claimed rights to the use of water. Those claimed rights, many of which are now exercised, are being utilized in the State of California to supply domestic water for long-established communities comprised of millions of people in the State of California and industrial users, the existence of which, in part at least, are predicated upon the junior claims of the State of California in the Lower Colorado River. It may well be that, when the Tribes commence fully to exercise their "present perfected rights," it will be politically and practicably impossible for them to recover the waters now being diverted and used by the municipal and industrial users who are exercising junior rights.

(3) One of the gravest threats to the Tribes is the known over-appropriation of the water supply of the Lower Basin of the Colorado River. Irrespective of that over-appropriation, the Secretary of the Interior, in total disregard of the rights of the Tribes, is now building the Central Arizona Federal Reclamation Project with a capacity of 2,170,000 acre-feet of water annually from the Lower Colorado River. If completed, the Central Arizona Federal Reclamation Project's capacity together with present uses will exceed the entire supply of water in the Lower Basin of the Colorado River.[16]

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[16] See Colorado River Compact 1922, pp. 53 *et seq.* Documents on the Use and Control of the Waters of Interstate and International Streams, Compacts, Treaties and Adjudications, 1968. 90th Con-

IV.

THE UNITED STATES HAS WILLFULLY FAILED TO MAINTAIN COMMUNICATIONS WITH THE TRIBES WHO ARE CLIENTS/BENEFICIARIES

The United States has participated throughout this litigation on behalf of the five Tribes along the Lower Colorado River. Notwithstanding, the fact that the United States has fiduciary obligations both as counsel for the Tribes and as trustee for the Tribes, it has deliberately failed throughout this litigation to advise the Tribes as to the status of the proceedings or the effect of these proceedings upon the Tribes' "present perfected rights." The failure properly to represent the Tribes is documented in part in the attached affidavit of Llewellyn Barrackman who is the Chairman of the Fort Mojave Tribal Council and the Chairman of the Confederated Indian Tribes of the Colorado River. (See also Appendix A to the Tribes' Motion filed December 23, 1977.)

INTERIOR'S POLICY TO LIMIT OR PREVENT THE EXERCISE OF INDIAN "PRESENT PERFECTED RIGHTS" ON THE LOWER COLORADO RIVER— THE ESSENCE OF ALL-PERVASIVE CONFLICTS OF INTEREST

V.

The long-time practices and procedures of the Interior Department have been to limit, restrict or prevent the exercise of Indian "present perfected rights" on the Lower Colorado River for the benefit of non-Indian projects and uses.

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gress, 2d Session, House Document 319. See 43 U.S.C. 1521, *et seq.*, Central Arizona Project.

VI.

Prior to and after the enactment of the Federal Reclamation Act,[17] the Secretary of the Interior has steadfastly prevented the development and exercise of Indian water rights on the Lower Colorado River for the benefit of the competing Defendants in *Arizona* v. *California*, the Imperial Irrigation District, the Palo Verde Irrigation District and the Yuma and Gila Federal Reclamation Projects.[18]

VII.

The non-Indians on the Federal Reclamation Projects on the Lower Colorado River historically have received 160 acres [19] of irrigable land in sharp contrast to the acreage allotted to the Indians. The Quechans of the Fort Yuma Reservation and the Indians on the Colorado River Indian Reservation, under the original acts, received ". . . five acres of irrigable land." [20]

VIII.

Because of the conflict of interest between the Tribes' rights and those claimed by the Bureau of Reclamation and its constitutents, the violation of Indian rights to the use of water and the preclusion of the exercise of those rights have become a basic policy of the Department of Interior. That policy has been most pronounced where the Indian lands and claims were in direct conflict with the California Defendants, Palo Verde Irrigation District,

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[17] 43 U.S.C. 371.

[18] See attached Affidavit of Charles P. Corke, Appendix B.

[19] 43 U.S.C. 431.

[20] 33 Stat. 224. Subsequently, those Indians were allotted ten (10) acres of irrigable land.

Imperial Irrigation District and the aforesaid Federal Reclamation Projects, the Yuma and Gila Projects.

IX.

There is attached to this Petition of Intervention by the Tribes an affidavit of an official of the Bureau of Indian Affairs who has for the past 20 years witnessed the prevention of the development of the rights to the use of water of the Tribes in the western United States in general and particularly on the Colorado River. Reference is made in that affidavit to the studied violation by the Interior Department of those rights and to the prevention of development of those rights including but not limited to the refusal to seek funds for the Tribes' irrigation projects. The attempt to "stipulate the present perfected rights" of the States and the California Defendants, while refusing to have determined the "present perfected rights" of the Tribes, is a manifestation of that long-time policy.[21]

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[21] See Appendix B, Affidavit of Charles P. Corke, Acting Chief, Irrigation Section, Office of Trust Responsibilities, Bureau of Indian Affairs, Department of Interior.

THE UNITED STATES' REFUSAL TO ESTABLISH BOUNDARIES ON THE INDIAN RESERVATIONS, A COROLLARY TO INTERIOR POLICY TO PRECLUDE EXERCISE OF INDIAN "PRESENT PERFECTED RIGHTS"

X.

In excess of 100 years, subsequent to the establishment in 1865 of the Colorado River Indian Reservation, the boundaries of those reservations continue to remain undetermined. That fact is a prime example of the Interior Department policy to prevent the exercise of Indian "present perfected rights." That adamant refusal to determine the reservation boundaries has resulted in grave doubts as to the measure, extent and nature of the "present perfected rights" of the Tribes. Refusal to perform a routine task of determining the boundaries further exemplifies the conflicts of interest within the Interior Department as they pertain to the sharp conflict between the Indian and the non-Indian claimants to water from the over-appropriated Colorado River. A graphic illustration of the intentional omission of Tribal lands from the response of the United States to the Joint Motion is depicted on Plate 2, which follows:

A. Fort Mojave Indian Reservation

1. *The Hay and Wood Reserve*

There is incorporated into this paragraph that part of the motion of the petitioning Fort Mojave Indian Tribe pertaining to the Hay and Wood Reserve.[22] As averred in the Tribes' motion, the Secretary of the Interior in 1931 approved an official survey which stripped 3500 acres of invaluable land from the Fort Mojave Indian Reservation. On March 15, 1967, the Solicitors Office of the Department of Interior declared a substantial part of those 3500

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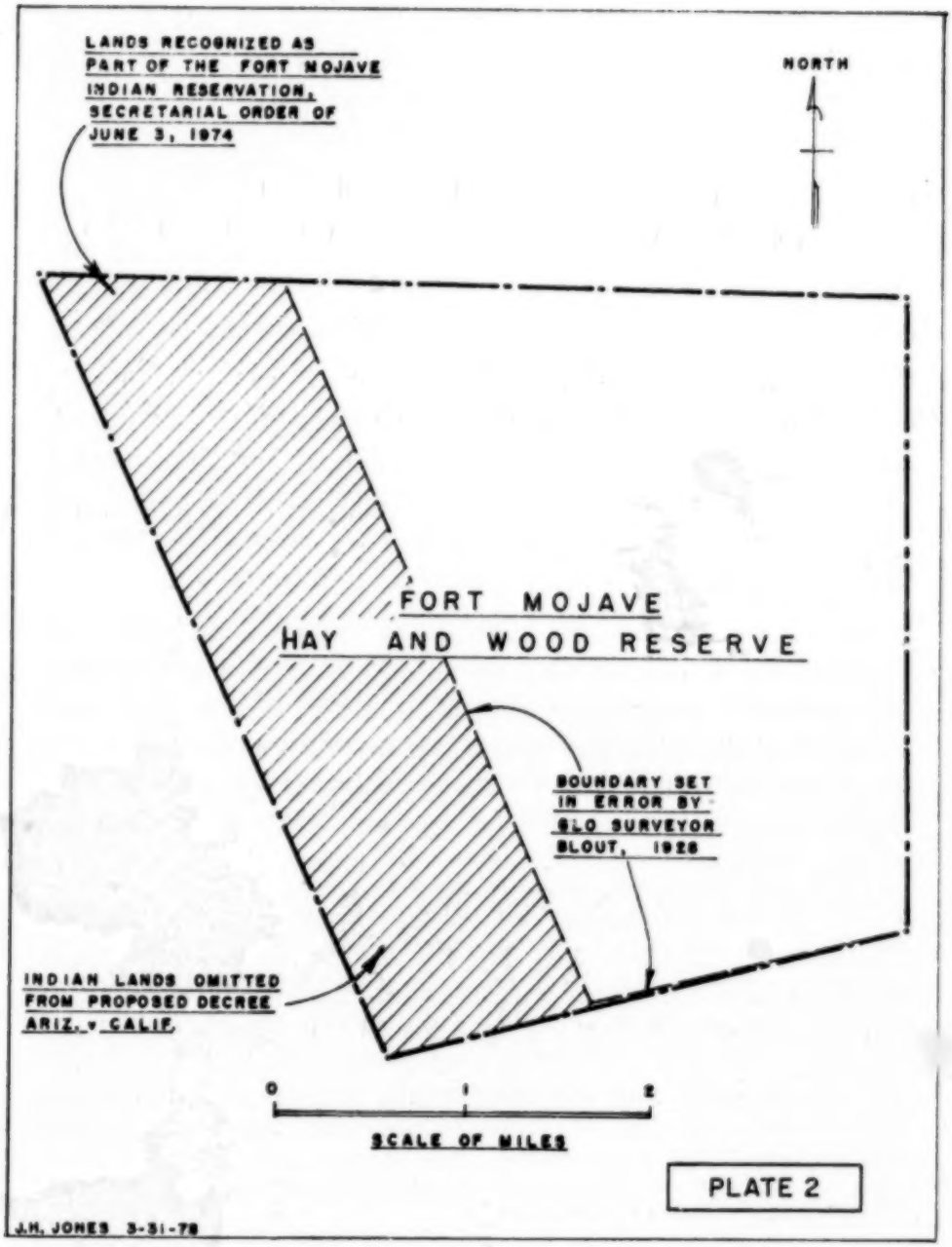
[22] Motion, p. 9, para. XVIII *et seq.*


LANDS RECOGNIZED AS PART OF THE FORT MOJAVE INDIAN RESERVATION, SECRETARIAL ORDER OF JUNE 3, 1974
NORTH
FORT MOJAVE HAY AND WOOD RESERVE
BOUNDARY SET IN ERROR BY GLO SURVEYOR BLOUT, 1928
INDIAN LANDS OMITTED FROM PROPOSED DECREE ARIZ. v CALIF.
0
1
2
SCALE OF MILES
PLATE 2
J.H. JONES 3-31-78

acres of land to come within the purview of the Swamp and Overflow Act, thus vesting title to them in the State of California. Those proceedings were conducted by the Department of Interior without the knowledge of or participation in the proceedings by the Fort Mojave Tribe. By the most fortuitous sequence of events, the Tribes became aware of the divestiture of their lands and undertook the recovery of them. That recovery was accomplished against the adamant opposition of the Solicitors Office.[23]

(a) It is a fact known to the Tribes that there was little or no factual or legal preparation by the Department of Justice in regard to the boundary of the Hay and Wood Reserve, which was brought into issue before the Special Master.[24]

(b) Investigations undertaken in cooperation with and for and on behalf of the Fort Mojave Tribe established the correct boundary of the 3500 acres of the Hay and Wood Reserve for which there has been presented no claim for "present perfected rights." That investigation and the opinion stemming from it are set forth in the motion of the Tribes.[25]

(c) In the November 10, 1977 response of the Justice Department to the Joint Motion of the States and California Defendants, no claims were made nor was there any response effectively presented to the assertions of the

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[23] See Opinion, Aug. 10, 1971, State of California, Applicant, United States Bureau of Land Management, Respondents; Fort Mojave Indian Tribe, Intervener. See Opinion, Nov. 24, 1972, Decision of Office of Hearings and Appeals, Department of Interior, 1BAL70-150, State of California.

[24] See Dec. 5, 1960 Report, Special Master, Arizona v. California, Boundary Dispute—Opinion, pp. 283 *et seq.*; see Court's rejection of Special Master's determination, Arizona v. California, 373 U.S. 546, 601 (1963).

[25] See Motion, pg. 10, and Appendix, p. 1B *et seq.*

Joint Movants in regard to the Hay and Wood Reserve of the Fort Mojave Indian Reservation.[26] Failure of the Department of Justice to bring to the attention of the Court in the Response of November 10, 1977, the resolution of the boundary dispute for the Hay and Wood Reserve of the Fort Mojave Indian Reservation is representative of the general refusal to properly represent the Indian Tribes in the case of *Arizona* v. *California.*

(d) Additional lands in the Hay and Wood Reserve: There is attached to this Petition and made a part of it by reference Appendix C setting forth additional lands entitled to "present perfected rights" in the Hay and Wood Reserve for which no claims were asserted by the Department of Justice.

2. *Camp Mojave Reserve in the Fort Mojave Indian Reservation*

There is set forth in Appendix C lands in the Camp Mojave Reserve of the Fort Mojave Indian Reservation for which no "present perfected rights" were claimed by the Justice Department in the case of *Arizona* v. *California.*

3. *The Intermediate Area of the Fort Mojave Indian Reservation*

There is set forth in Appendix C additional lands in the Intermediate Area of the Fort Mojave Indian Reservation for which claims for "present perfected rights" were not asserted by the Department of Justice in the case of *Arizona* v. *California.*

4. *The Checkerboard Area of the Fort Mojave Indian Reservation*

There is set forth in Appendix C additional lands in the Checkerboard Area of the Fort Mojave Indian Reser-

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[26] Motion, December 23, 1977, p. 9 *et seq.* See Joint Motion, Claims, p. 24 *et seq.*

vation for which no claims for "present perfected rights" were made by the Department of Justice in *Arizona* v. *California.*

Petitioner, the Fort Mojave Tribe, hereby asserts claim for "present perfected rights" for all of the additional lands set forth above and for those lands set forth in Appendix C.

B. Colorado River Indian Reservation

1. *State of California Benson Line Area, Ninth Avenue Cut-Off, Olive Lake Cut-Off*

There is incorporated into this Petition the allegations contained in the Tribes' December 23, 1977 motion in regard to the following in the Colorado River Indian Reservation: (a) The State of California Benson Line Area; (b) the Ninth Avenue Cut-Off; and (c) the Olive Lake Cut-Off.[27] In regard to the land referred to in (a), (b) and (c) no claims have been made for "present perfected rights" for the Tribes in *Arizona* v. *California.* (See also Appendix C.)

2. *Lands South of the Benson Line of the Colorado River Indian Reservation*

There is set forth in Appendix C the additional lands within the Colorado River Indian Reservation for which no "present perfected rights" were claimed by the Department of Justice in *Arizona* v. *California.*

3. *Lands along the Northern Boundary and Lands South and East of the Colorado River within the Colorado River Indian Reservation*

There is set forth in Appendix C additional lands along the northern boundary and lands south and east of the

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[27] Motion, pp. 12-13.

Colorado River within the Colorado River Indian Reservation for which no "present perfected rights" were claimed by the Department of Justice in *Arizona* v. *California*.

4. *Lands in the La Paz Area of the Colorado River Indian Reservation*

There is set forth in Appendix C additional lands in the La Paz area within the Colorado River Indian Reservation for which no "present perfected rights" were claimed by the Department of Justice in *Arizona* v. *California*.

Petitioner, the Colorado River Indian Tribes, hereby asserts claim for "present perfected rights" for all of the additional lands set forth above and for those lands set forth in Appendix C.

C. Chemehuevi Indian Reservation

1. There is incorporated into this Petition and made a part of it by reference the claims set forth in the December 23, 1977 motion made for and on behalf of the Chemehuevi Indian Tribe.[28]

2. Additional lands for the Chemehuevi Tribe: There is set forth in Appendix C additional lands within the Chemehuevi Indian Reservation for which no claim for "present perfected rights" was made by the Department of Justice in *Arizona* v. *California*.

Petitioner, The Chemehuevi Indian Tribe, hereby asserts claim for "present perfected rights" for all of the additional lands set forth above and for those lands set forth in Appendix C.

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[28] See Motion, p. 14, D.

D. Quechan Tribe of the Fort Yuma Indian Reservation

1. *Title to Lands Residing in Quechan Indian Tribe Entitled to "Present Perfected Rights"*

There is incorporated into this Petition and made a part of it by reference the claims and allegations respecting the failure of the Secretary and the Solicitor of the Department of Interior to resolve the rights, title and interest of the Quechan Tribe in and to the lands and the "present perfected rights" for use in connection with those lands.[29]

2. Lands Accreted to the Fort Yuma Indian Reservation

There is set forth in Appendix C of this Petition the claims of the Quechan Tribe to lands accreted to the Fort Yuma Indian Reservation to which no claims were made for "present perfected rights" by the Department of Justice in *Arizona* v. *California.*

Petitioner, the Quechan Tribe of the Fort Yuma Indian Reservation, hereby asserts claim for "present perfected rights" for all of the additional lands set forth above and for those lands set forth in Appendix C.

XI.

IRRIGABLE LANDS FOR WHICH THE TRIBES ARE ENTITLED TO "PRESENT PERFECTED RIGHTS" ARE ARBITRARILY AND CAPRICIOUSLY ABANDONED IN ARIZONA V. CALIFORNIA

There is specifically incorporated into this Petition and made a part of it by reference the irrigable lands which were arbitrarily and capriciously abandoned by the Department of Interior in the preparation of the case of *Arizona* v. *California.*

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[29] *Ibid.*, para XXIV.

Each of the petitioning Tribes, individually and collectively, asserts and claims "present perfected rights" for the irrigable lands tabulated in the motion.[30]

XII.

TRIBES REAFFIRM CLAIMS TO DECREED RIGHTS

Each of the Tribes, individually and collectively, asserts all of their rights, title and interest in and to the "present perfected rights," all as ordered, adjudged and decreed to them by the Final Decree, Article II D(1)-(5).

XIII.

The failure of the Department of the Interior and the Department of Justice to properly claim for the Tribes individually and collectively "present perfected rights," all as set forth above, *supra*, p. 12, *et seq.*, should in no way prejudice or adversely affect the "present perfected rights" already adjudicated to the Tribes in the Final Decree.

XIV.

TRIBES ARE NOW AND HAVE BEEN DISCRIMINATED AGAINST BY REFUSAL TO PROVIDE FUNDS TO PROTECT THEIR INTERESTS IN ARIZONA V. CALIFORNIA

There is set forth in detail in both the motion and brief filed by the Tribes December 23, 1977, the history of conflicts of interest within the Department of Interior and the Department of Justice.[31] Reviewed there is the fact that officials of the Departments of Interior and Justice readily admitted the conflicts of interest within their

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[30] See Motion, pp. 15 *et seq.*; see p. 16, para. XXIX. See also Appendix C of this Petition.

[31] See Motion, p. 3, para. IV, *et seq.* See Brief, pp. 5 *et seq.*

Departments as they relate to the claims of the Indians and the adverse claims of the non-Indian properties and water uses represented by both Departments.[32]

XV.

Judicial cognizance[33] has been taken of the need to have special counsel representing the Tribes where, as here, there are the conflicts of interest within the Interior and Justice Departments between Indian and non-Indian claimants over rights to the use of water which are before the Court for adjudication.

XVI.

In the "United States Department of the Interior Budget Justifications, F.Y. 1979, Bureau of Indian Affairs,"[34] Congress is requested "To provide sufficient funds for rights issues resolution, litigation, and attorneys fees."[35] Moreover, the General Accounting Office, by a recent opinion, has specifically recognized the propriety of using appropriated funds to pay legal fees where the conflicts of interest are of such character that it is impossible to utilize the Department of Justice to represent the Indian interests in water litigation.[36]

XVII.

Irrespective of the administrative, judicial, and legislative recognition of the need for employing independent counsel to represent the petitioning Tribes, due to the

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[32] See Brief, pp. 7-9.

[33] State of Mexico v. Aamodt, 537 F.2d 1102 (CA 10, 1977).

[34] Appendix D, p. 5.

[35] *Ibid.*, BIA-62 of original document.

[36] Decision dated May 30, 1975, Expenditures for the legal expenses of Indian tribes, The Comptroller General of the United States, Washington, D.C., Appendix E.

conflicts of interest in cases such as *Arizona* v. *California*, the Department of the Interior and the Department of Justice adamantly refused to provide special counsel for the Tribes. Additionally, funds will not be provided by those Departments for Petitioner Fort Mojave and other Tribes which have their own counsel but insufficient funds to pay for their services. That type of discrimination against the Tribes is a further manifestation of the intentional violation of the trust obligation of the United States to protect the "present perfected rights" of the Tribes. Those Departments have, moreover, refused to authorize the utilization of counsel within the Department of the Interior, all as authorized by the Congress.[37] Similarly, the Department of the Interior has refused to provide funds with which to prepare this Petition or any of the costs in connection with it.

XVIII.

PATENT AMBIGUITIES IN "PROPOSED SUPPLEMENTAL DECREE," IF ADOPTED, WILL ACCENTUATE NOT AMELIORATE ON-GOING CONFLICTS [38]

There is specifically incorporated into this paragraph all parts of the Tribes' motion pertaining to the "patent ambiguities" in the "Proposed Supplemental Decree." [39] If adopted, the patent ambiguities will compound the present, most serious controversies as to the meaning of the Final Decree, all as averred in the Tribes' motion.

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[37] Motion, p. 2, para. IV.

[38] Motion, p. 6.

[39] Motion, pp. 6-9, Para. XI *et seq.*

XIX.

The Tribes' interests will suffer irreparable damage unless they are made full participating parties to this suit. The errors, patent ambiguities, distortions and the failure to recognize all of the "present perfected rights" of the Tribes, as the Joint Motion and the Response thereto now stand, will only contribute to the historic conflicts between the Indians and the non-Indians to Colorado River water, and, instead of resolving disputes and controversy, will only serve to compound the problems.

XX.

INTERVENTION BY THE TRIBES WILL EXPEDITE NOT IMPEDE THE ULTIMATE CONCLUSION OF ARIZONA V. CALIFORNIA

Efforts to piecemeal the resolution of the complex and contentious issues of "present perfected rights" between the conflicting Indian and non-Indian rights, as proposed by the States, Joint Movants, can only result in protracted and, indeed, further futile litigation. A vast array of problems as to claims of the non-Indian either represented by the Department of Justice or operating under contractual assignments with the Secretary of the Interior remains to be resolved. Those problems involving the extent, measure and nature of the "present perfected rights" of all parties can best be resolved by the elimination of conflicting interests which pervade all aspects of *Arizona* v. *California* in its present posture.

XXI.

The Tribes' interests in the "present perfected rights" to Colorado River water are markedly divergent from the rights asserted by the Department of the Interior and the Department of Justice in that these agencies of the United States need for themselves great quantities of

water and, acting in concert with the various State parties, have embarked upon a course of conduct designed to compromise the lawful claims of the Tribes. The United States is not, and has not been, effective in asserting Tribal rights, nor has the United States attempted diligently to fulfill its trust obligations in its opposition to the Joint Motion.

XXII.

Without Tribal intervention, the "present perfected rights" of the Tribes will be irreparably damaged and the final determination, as proposed, of the "present perfected rights" of the Arizona and California Defendants would be inconsistent with equity and good conscience.

XXIII.

Alternatively and supplementally, the Tribes meet the requirements for intervention as a matter of right or for permissive intervention as prescribed in the Federal Rules of Civil Procedure, Rules 24(a)(2) and 24(b)(2). As owners of full equitable title in and to "present perfected rights" in the Colorado River, the Tribes' interests will necessarily be irreparably damaged by the attempted determinations as set forth in the proposed Supplemental Decree.

XXIV.

Tribal intervention will in no way unduly prejudice any of the parties since, through this litigation, the Tribes have been purportedly represented by the Solicitor General, and the Tribes have been the real parties in interest. The magnitude of the rights being litigated and the errors, ambiguities and defects of the proposed Supplemental Decree which are not being corrected by the Solicitor General require the substitution of new counsel for the Tribes who will provide effective representation and whose sole responsibility will be to the Tribes.

XXV.

ALLEGED SUBORDINATION—A FRAUD AND A SUBTERFUGE

There is no merit to the alleged subordination set forth in the Joint Motion and agreed to by the United States in the Response. That alleged agreement purports to subordinate the conflicting "present perfected rights" of the non-Indian projects and uses to the largely undetermined "present perfected rights" of the Tribes. As emphasized in the Tribes' motion, the patent ambiguities on the face of the subordination render it meaningless. As proposed, that subordination, if adopted, would create conflicts—not resolve them.[40] To agree to an alleged subordination in return for the acceptance of the gravely misstated and grossly inflated claimed "present perfected rights" of the Imperial Irrigation District and others would, without a determination of the "present perfected rights" of the Tribes, only bring disaster to the Tribes. Any subordination that will have merit can only be achieved through the Tribes acting through their own counsel who will be free of conflicts of interest. Hence, the Tribes reject any suggested subordination of the character apparently agreed to by the United States.

WHEREFORE, the Fort Mojave Tribe, the Quechan Tribe of the Fort Yuma Indian Reservation, the Chemehuevi Indian Tribe, the Colorado River Indian Tribes and the Confederation of Indian Tribes of the Colorado River; and the National Congress of American Indians, acting individually and collectively, respectively petition the Court as follows:

> When, all in accordance with the letter dated February 23, 1978, from the Clerk of the Court, the United States has filed its response to the Tribes'

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[40] See Motion, pp. 6 *et seq.*

motion, brief and this petition of intervention and when the State parties have filed a response to this petition of the Tribes, the Court will enter the following order:

1. To allow the Tribes to intervene in *Arizona* v. *California* and to have their own counsel to represent them independent from the Solicitor General of the United States in all future matters pertaining to that case;

2. To refrain from granting the Joint Motion for a Determination of "Present Perfected Rights" and from granting any relief prayed for in that Joint Motion;

3. To require all parties to meet at a time certain with the objective of resolving, if possible, the conflicts among them as to the measure and extent of their respective "present perfected rights" and in regard to any issues which may be unresolved to stipulate as to the nature, character and extent of those issues and to file that stipulation with the Clerk of the Court within a specified time. If full agreement as to the unresolved issues cannot be achieved among the parties, the parties will be authorized to file separate statements on their own behalf;

4. To enter an appropriate order for further proceedings as it may deem necessary, under the

circumstances, based upon the stipulations as to resolved and unresolved issues among the parties.

Respectfully submitted,

RAYMOND C. SIMPSON, Attorney for Petitioners, the Fort Mojave Tribe, the Quechan Tribe of the Fort Yuma Indian Reservation, the Chemehuevi Indian Tribe, the Colorado River Indian Tribes and the Confederation of Indian Tribes of the Colorado River; and the National Congress of American Indians as Amicus Curiae

2032 Via Visalia
Palo Verdes Estates, CA 90274

DATED: April 7, 1978

APPENDIX A

Affidavit of Chairman Llewellyn Barrackman of the Fort Mojave Tribal Council, Fort Mojave Indian Tribe, Chairman of the Confederation of Indian Tribes of the Colorado River

AFFIDAVIT

Affiant does hereby state that: he is a citizen of the United States, over the age of twenty-one, and an American Indian duly enrolled as a member of the Fort Mojave Indian Tribe. His reservation is geographically surrounded by the States of Arizona, California and Nevada—with the Colorado River running through the reservation.

At the present time he is the elected Chairman of the Fort Mojave Tribal Council and the elected Chairman of the Confederated Tribes of the Lower Colorado River, whose membership includes the Cocopah, Quechan, Colorado River, Chemehuevi and Fort Mojave Indian Tribes.

I have repeatedly requested that the United States consult with our tribes regarding our water rights under *Arizona* vs. *California*, but my requests have been to no avail. Instead, the United States merely scheduled some meetings where they told us that our input was not desired since a "deal" had already been made with the States and the Irrigation Districts. This started in 1971, when the leaders of our respective tribes were asked to come to Washington, D.C. to discuss a Stipulation that was being proposed. Representatives of the Department of Justice and the Department of Interior at that time told us that the Supreme Court wanted to finalize the present perfected rights under Article VI of the decree within two years after it had issued, but that necessary studies to marshall the facts had not been conducted so that the proposed Stipulation seemed like the easiest answer.

In response, the Indian leaders objected to the Stipulation and requested that a diligent effort be made without further delay to obtain the facts so that the truth could be presented to the Supreme Court.

Other meetings designed to pressure the Indians were thereafter scheduled, but these meetings can in no way be

described as "consultation". They involved a one-way street with dictation to the Indians. In other words, the Indian leaders believed that "consultation" was a two-way street, where the Indians would be afforded the opportunity of telling their side. These meetings amounted to little more than a farce—a charade that would permit the United States, for the record, to say that they had actually met with the Indians, but which clearly concealed the fact that the United States as the legal representative of the Indians had not really "consulted" with the "client".

In early 1972, the Indians requested that the Secretary of the Interior make funds available to employ experts in the area of soil classification so that their irrigable acres under the *Winters* Doctrine could be correctly determined. Again the Indians were urged to accept the proposed Stipulation—the "deal" that their trustee had made with the States and the Irrigation Districts! Our Indian leaders in turn went to see the Chairmen of the Indian-Subcommittees of both the Senate and the House. As a result, funds were then made available in 1974 to employ an engineering firm to do the soil classification work. In fact, the Indians were next told to attend a meeting in Yuma, Arizona to "consult" with the Bureau of Indian Affairs regarding the selection of the best qualified firm to do the work. When they arrived the Indians were given the names of five firms that had already been evaluated by the Indian Bureau who stated that "all five" were acceptable. In turn, the Indians rejected one firm with specific reasons, and immediately told the Indian Bureau personnel the name of their first choice. The representatives of the Indian Bureau then thanked the Indians, concluded the meeting, went back to Phoenix, and two days later employed the one firm the Indians had rejected.

In 1975 the Secretary of the Interior, after numerous requests by the Indians, made funds available to hire experts to examine the claims by the three major non-Indian Irrigation Districts on projects contained in the

proposed Stipulation of Present Perfected Rights, considering both the dates and acreages claimed.

On March 31, 1975, a consulting firm was employed. The consulting firm soon found that the priority dates claimed and acreages claimed were wrong, and were based upon "a deal" made by the States and not upon facts. When the Area Office found out that the consultant was discovering that the proposed Stipulation of Present Perfected Rights was false, they began to delay payment to the consultant, some payments were delayed for nearly one and a half years, and others still haven't been paid.

The Area Office not only did not cooperate with the consultant, but harassed him; refused to extend the time limitation provided in the contract, even though the consultant had not spent all of the monies covered by the contract; refused to enlarge the contract even though the Washington office offered the money and urged enlargement of the contract; and the Area Office attempted to confiscate the work. All of this was done to prevent the Indian effort to have the truth presented to the Supreme Court.

Again, in 1975 the Indian leaders were again called to a meeting by the Bureau of Indian Affairs to consider the soil classification work which had been completed, and to give their approval. The preliminary results looked rather good to our Indian leaders, but we could not give our approval due to the fact that certain specific areas of land had not been included, and we were unwilling to endorse such deception. At this time we were warned that if we kept on insisting upon the truth being presented to the Supreme Court that we would really be in trouble. Although we had no wish to be unreasonable we firmly felt that anything short of a truthful presentation would be both intolerable and unconscionable. Hence, all of the Indian leaders agreed to stand firm.

In the wake of this warning we learned that the Department of Justice, the Department of the Interior, the

States, and the Irrigation Districts were going to have a "big" meeting in Washington, D.C. to resolve the Indian opposition to the proposed Stipulation. On behalf of the Indian leaders I requested that we be included. My request was denied. I next requested that the attorney representing our Confederated Tribes be allowed to be present. By the time that the big meeting took place this request was conditionally granted, the condition being that our attorney was not to say anything at the meeting unless everyone else had had their say and some meeting time was still left. This "big" meeting took place in May of 1976, and it was chaired by the Solicitor for the Department of the Interior. The theme of the meeting was evidenced by the repeated assertion that there was an abundance of water in the Colorado River so that the Indians should not worry about the fact that the proposed Stipulation gave them a priority junior to our opponents.

When all others had been given a chance to say whatever they wanted, the Solicitor then told our attorney that he could comment. His comment was brief. In substance he said that the Indians could not accept the Stipulation because this would require that they became an accessory to the perpetration of a fraud upon the Supreme Court. He then noted that the priority dates given to the Irrigation Districts are false, and that any honest investigation of the facts would graphically show that the stipulated "facts" had no relationship to reality. He further emphasized that this was critical to the Indians due to the fact that the Colorado River is already bankrupt. Further, he then challenged those present to prove their premise that there was no reason to worry about a shortage of water by agreeing to subordinate their clients position to that of the Indians. His challenge was rejected unless the Indians would agree to give up any claim to water for their disputed lands which might be added to their reservation in the future.

After this "big" meeting the Indian leaders next persuaded the Bureau of Indian Affairs to start an investigation of the facts related to the claimed priorities of their opponents. When this investigation uncovered the facts that proved the flagrant falsifications set forth in the proposed Stipulation, word came from high authority that the funding for the investigation had been ended.

In May of 1977, the States gave up on their plan to sell the proposed Stipulation and filed a joint motion to have the Supreme Court enter a decree which in substance was the same as the Stipulation. In response, the United States has continued its refusal to aggressively advocate our Indian rights. In fact, when I requested additional time to provide Indian input for the response I was once again told that this could not be done. Hence, since we really lacked true legal representation for our Indians, I called a meeting of our Indian leaders and we agreed to ask the Supreme Court to take cognizance of the inherent conflict of interest which besets the United States, and to allow us to have our position presented by independent legal counsel of our own choice.

Still a further illustration pertaining to my tribe alone took place in March 1977, when the Area Office made a contract with a consulting engineer to study the river movements of the Colorado River through our Reservation, in order to determine the ownership status of our lands in connection with *Arizona* v. *California*. This contract was made without telling us it was going to be made; without asking us if we approved of it, without telling us who the contractor was, and without furnishing us a copy of the report written by the contractor. The contractor never visited the Fort Mojave Indian Reservation during the course of the preparation of his report, nor did he ever ask any of our Tribal members anything about the problem.

I protested this action to the Bureau of Indian Affairs but nothing was done about it.

DATED this 1st day of April, 1978.

/s/ Llewellyn Barrackman
LLEWELLYN BARRACKMAN

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

Subscribed and sworn to before me, by the above name Llewellyn Barrackman, this 1st day of April, 1978.

/s/ Marjorie Cessna
Notary Public

My Commission Expires Jan. 24, 1982.

APPENDIX B

Affidavit of Charles P. Corke, Acting Chief, Irrigation Section, Office of Trust Responsibilities, Bureau of Indian Affairs, Department of the Interior

AFFIDAVIT OF CHARLES P. CORKE, ACTING CHIEF, IRRIGATION SECTION, OFFICE OF TRUST RESPONSIBILITIES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

I, Charles P. Corke, being first duly sworn upon oath, depose and say that:

1. I am and have been for twenty-two (22) years an agricultural engineer directly and immediately involved in all phases of agriculture and irrigation development of the lands within the Indian reservations bordering upon or being traversed by the Lower Colorado River. Those reservations are as follows: (a) Fort Mojave Indian Reservation, (b) Chemehuevi Indian Reservation, (c) Fort Yuma Indian Reservation occupied by the Quechan Tribe, (d) Colorado River Indian Reservation.

2. From the initiation of the case of *Arizona* v. *California*, I have been directly and immediately involved in all phases and aspects of the claims of the Tribes occupying the Indian reservations referred to above.

3. I was assigned to and had the responsibility of preparing or assisting in preparing the technical data and exhibits required to prove the irrigable acreage within each of the aforesaid Indian reservations, the water requirements from the Lower Colorado River necessary to be applied to those irrigable acres to make them productive and other pertinent data required to prove factually the measure of the "present perfected rights" to which the Tribes are legally entitled for their irrigable lands on those reservations.

4. Subsequent to that time, I was appointed Deputy Assistant Commissioner of the Division of Economic Development of the Bureau of Indian Affairs, Department of the Interior and, in that capacity, I had the responsi-

bility of preparing or assisting in preparing the budgets to obtain funds for the development of the irrigable lands within those reservations. In my present position as Acting Chief of the Irrigation Section, Office of Trust Responsibilities, Bureau of Indian Affairs, Department of the Interior, I make this sworn statement relative to each of the reservations (with the exception of the Colorado River Indian Reservation which is discussed later) and of the Department of Interior's failure:

a. To assist the Tribes occupying those reservations to develop the irrigable lands requiring water from the Colorado River to make those irrigable lands productive;

b. To prepare plans for the development of irrigation projects essential to the irrigation of those lands;

c. To request funds from Congress or otherwise to budget funds to build irrigation projects to irrigate the lands in each of the reservations;

d. To impede, restrict or restrain the individual efforts of the Tribes to develop their own irrigable lands and thus to exercise their "present perfected rights."

5. I personally know of the long-term practice by the Department of the Interior to prevent, refrain or defer the determination of boundary disputes which exist on each of those reservations despite the efforts of the Tribes themselves to conduct proper factual and legal investigations for the purpose of establishing exterior boundaries of the lands and thereby defining with certainty the irrigable lands within them and title to "present perfected rights."

FORT MOJAVE INDIAN RESERVATION

1. The Department of the Interior has refused and continues to refuse to prepare developmental plans for the

irrigation of the lands within the Fort Mojave Indian Reservation either before or after the entry of the Final Decree in *Arizona* v. *California* in 1964, although the irrigable character of those lands had been known for at least thirty (30) years antecedent to the initiation of the case.

2. I personally know that the Fort Mojave Indian Tribe, on its own initiative and at great cost to itself, proceeded to obtain funds in the last three years to make extensive development of irrigable acreage and, in so doing, has now an imperative need to have determined with specificity the "present perfected rights."

3. In keeping with the policy of refusing to develop plans for the irrigation of the lands of the Fort Mojave Indian Reservation, the Department of the Interior has at all times refused and continues to refuse to seek funds from Congress for the development of the lands of the Fort Mojave Indian Reservation resulting in the Tribe being forced to obtain its own financing and to enter into long-term leases which do not provide the rental returns they would if they had developmental assistance from the Department of the Interior.

4. Because of the policy of the Department of the Interior to impede, if not prevent, the irrigation of lands within the Fort Mojave Indian Reservation, the Department of the Interior failed and continues to fail to provide electric power for the Fort Mojave Indian Tribe which, under law and regulation, is entitled to preferential status like other similarly situated Tribes, municipalities and other users. As a result, the Fort Mojave Indian Tribe is now confronted with a most serious economic problem because of the fact that the costs of power have trebled to the Fort Mojave Indian Tribe with the consequence that their economic development is threatened.

5. I personally have observed and have personal knowledge of the fact that the Department of the Interior has

refused to take the requisite steps to determine the boundaries of the Fort Mojave Indian Reservation and such determinations as have been made have been undertaken by the Fort Mojave Tribe itself. I further know that there are numerous other boundary disputes involving the apportionment of accreted lands that have not been resolved although they can be readily determined by the most simple and routine activities of apportioning accreted lands that have attached to the reservation properties. Moreover, the policy of narrowing and changing the channel of the Colorado River through the Fort Mojave Indian Reservation has taken place creating further irrigable lands but the policy of the Department of Interior has been to restrict the irrigation of those lands although, throughout the entire reach of the Colorado River from Davis Dam to the Mexican border, comparable lands are now being irrigated by non-Indian water users.

6. I personally know that the Department of the Interior and the Department of Justice, acting in concert, deliberately, intentionally, arbitrarily and capriciously failed to assert claims for irrigable lands although the lands were known to be irrigable in character. At the time that evidence was being introduced into the record at the trial of the facts in *Arizona* v. *California*, I was present in the courtroom when those lands were arbitrarily and capriciously abandoned in the trial of that case.

CHEMEHUEVI INDIAN RESERVATION

1. I am personally acquainted and have personal knowledge that the Department of Interior has for nearly three-quarters of a century intentionally discriminated against the development of the irrigable lands within the Chemehuevi Indian Reservation and refrained totally from taking any action for the economic development of those lands, although the surrounding area has continued to

be developed and to become economically viable. To date, although the large areas of land within the Chemehuevi Indian Reservation are known to be irrigable in character, there has been no action taken by the Department of Interior to subject those lands to irrigation to the irreparable damage of the Chemehuevi Indian Tribe.

2. I personally know that the development of Parker Dam and Reservoir should have been of great economic benefit to the Chemehuevi Indian Tribe. However, until most recently, the Tribe was denied access to the Parker Dam and Reservoir and now is permitted only limited access to the lake created by Parker Dam.

3. I personally witnessed and have personal knowledge that in the case of *Arizona* v. *California* large areas of known irrigable lands within the Chemehuevi Indian Reservation were arbitrarily and capriciously abandoned by the Department of Interior acting in concert with the Department of Justice with the attendant refusal to offer evidence in regard to the irrigable character of a large segment of the reservation.

4. As occurred in regard to the Fort Mojave Indian Reservation, the Chemehuevi Indian Tribe is entitled to an allocation of electric power in a preferential status at rates which would greatly assist economic development. Failure of the Department of the Interior and the Department of Justice in *Arizona* v. *California* to make appropriate claims for irrigable lands and the steadfast failure to develop the Chemehuevi Indian Reservation have in the past caused and will continue to cause irreparable damage to the Chemehuevi Indian Tribe.

FORT YUMA INDIAN RESERVATION OCCUPIED BY THE QUECHAN TRIBE

1. I am personally acquainted with and I am fully informed in regard to the status of the title of the Fort

Yuma Indian Reservation occupied by the Quechan Indian Tribe. The data obtained and the information secured through investigations directed largely by me in connection with the issue of the title disclose the failure, over the last three-quarters of a century, to determine the status of the title of the Quechan Tribe to its Fort Yuma Indian Reservation.

2. I personally know that in the development of the All-American Canal to irrigate the Imperial Irrigation District, one of the principal defendants in the case of *Arizona* v. *California*, the Department of the Interior revived a long abandoned and alleged agreement that purported to cede to the United States lands of the Fort Yuma Indian Reservation. By that method, the All-American Canal was constructed across the Fort Yuma Indian Reservation with the consequence that the Quechan have been and are now denied title to their lands and to the substantial areas of "present perfected rights" which were arbitrarily and capriciously abandoned by the Department of the Interior and the Department of Justice in offering evidence in the case of *Arizona* v. *California*.

3. The thorough investigation that was made by the Department of Interior, largely under my direction, as to the title of the Quechan Tribe revealed that the Tribe had never relinquished or ceded to the United States the title to those properties, all as confirmed by a preliminary opinion of the Solicitor of the Department of the Interior. That opinion was then withdrawn following vigorous political attacks upon the Department of the Interior.

4. On May 24, 1977, to my personal knowledge, the present Solicitor of the Department of Interior declared that he would investigate the title of the Quechan Tribe and advise them relative to its status. His promise was predicated upon the filing of the Joint Motion for a determination of "present perfected rights" and entry of a supplemental decree by the States of Arizona, California

and Nevada and the other named defendants on May 3, 1977. Failure to make that determination as to title is now and has at all times resulted in irreparable damage to the Quechan Tribe of the Fort Yuma Indian Reservation.

5. I was personally aware of and witnessed the Department of the Interior and the Department of Justice, acting in concert in the case of *Arizona* v. *California*, refuse to claim "present perfected rights" for nearly 5000 acres of accreted lands on the Fort Yuma Indian Reservation which are invaluable and, indeed, substantial portions of which are now being irrigated although no claim was made for "present perfected rights" on behalf of the Quechan Tribe.

6. Unless and until the title dispute on the Quechan Reservation, which has been so long intentionally deferred for the betterment of the non-Indian claimants to water from the Lower Colorado River is settled, there will be continued conflict among the claimants to water in the Lower Colorado River.

COLORADO RIVER INDIAN RESERVATION

1. I have personally investigated and know that 100 years ago, the United States of America initiated the first congressionally-authorized and financed irrigation project on the Colorado River Indian Reservation. Although repeated efforts have been made by interested parties to secure the completion of that project, it remains over 25 per cent incomplete at this time. That failure to complete the irrigation project on the Colorado River Indian Reservation is the direct result of the long-established policy, sworn to above, of the Department of Interior to preclude or delay the full development of irrigable acreage on the Indian reservations along the Lower Colorado River.

2. For many years, the Department of Interior refused, and today continues to refuse to seek and provide funds to expedite construction work to apply available Colorado River water to some of the finest lands in the world, lands which can be readily irrigated if the irrigation project now in existence is completed in a manner that would include the lands originally intended to be irrigated.

3. Failure of the Department of Interior finally to establish boundaries along large segments of the Colorado River Indian Reservation has resulted in an inability to definitely determine the extent of the "present perfected rights" to which the Colorado River Indian Tribes are entitled.

4. I personally observed and know that in the case of *Arizona* v. *California*, the Department of the Interior and the Department of Justice, acting in concert, deliberately, arbitrarily and capriciously abandoned lands irrigable in character rather than assert them for and on behalf of the Colorado River Indian Tribes.

5. I personally undertook an investigation of the lands arbitrarily and capriciously abandoned on the Colorado River Indian Reservation, along with the other reservations to which reference has been made, and have determined that the Colorado River Indian Tribes have suffered irreparable and continuing damage due to the failure of the Department of the Interior and the Department of Justice to properly assert claims for water for that reservation.

Finally, under oath, I depose and say that the large developments of the non-Indian projects, with which I am personally familiar and have personally investigated, together with the proposed final determination of exorbitant "present perfected rights" for those non-Indian projects, defendants in the case of *Arizona* v. *California*, must necessarily cause irreparable damage to all of the Tribes

occupying reservations along the Colorado River. Once "present perfected rights" have been determined by several of the parties while other parties remain in doubt as to the extent of their rights, an unfair distribution of the grievously short water supply results; as a consequence, non-Indian economies will be developed utilizing waters to which the Indians are legally entitled, to the irreparable and continuing irreparable damage to the Indian Tribes.

/s/ Charles P. Corke
CHARLES P. CORKE

SUBSCRIBED and sworn before me this 4th day of April 1978.

/s/ Mario S. Romero
Notary Public

My Commission expires: 6/30/78.

APPENDIX C

Irrigable Acreage Contained Within Reservation Boundaries Not Presented to the United States Supreme Cout by the United States in *Arizona* v. *California*

C-1

IRRIGABLE ACREAGE CONTAINED WITHIN RESERVATION BOUNDARIES NOT PRESENTED TO THE UNITED STATES SUPREME COURT BY THE UNITED STATES IN ARIZONA vs. CALIFORNIA

RESERVATION	Acres	Acre-Feet Per Acre	Acre Feet
FORT MOJAVE			
Hay and Wood Reserve West of 1931 Survey	3,500 —	6.46	22,600
Additional Lands	1,200	6.46	7,800
Camp Mojave Reserve	3,000	6.46	19,400
Intermediate Area	1,200	6.46	7,800
Checker Board Area	3,900	6.46	25,200
Subtotal	12,800		82,800
COLORADO RIVER INDIAN RESERVATION			
Benson Line Area	4,000	6.67	26,700
Ninth Avenue Cut-Off	200	6.67	1,300
Olive Lake Cut-Off	2,000	6.67	13,300
South of the Benson Line	2,500	6.67	16,700
Along Northern Boundary	5,000	6.67	33,400
La Paz Area	3,000	6.67	20,000
South and East of River (Other)	41,600	6.67	277,500
Subtotal	58,300		388,900
CHEMEHUEVI INDIAN RESERVATION	2,500	5.97	14,900
Subtotal	2,500		14,900
QUECHAN TRIBE			
Additional Lands	13,000	6.67	86,700
Accretion Lands	4,800	6.67	32,000
Subtotal	17,800		118,700
GRAND TOTAL	91,400		605,300

FOOTNOTE: These figures are the most exact that are available to the petitioning tribes at this time. The figures which have heretofore been presented to this Honorable Court are grossly inadequate due to the failure of the United States, as Trustee, to expeditiously resolve the boundary disputes and to make the necessary soil surveys and land classifications. See section entitled, "Refusal to Establish Boundaries On the Indian Reservations, a Corollary to Interior's Policy to Preclude Exercise of Indian 'Present Perfected Rights.'" There is possible overlapping which should be resolved by an Order from this Court.

APPENDIX D

United States Department of the Interior Budget Justifications, F.Y. 1979, Bureau of Indian Affairs

D-1

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUDGET JUSTIFICATIONS, F. Y. 1979

[SEAL]

BUREAU OF INDIAN AFFAIRS

D-2

DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Budget Estimates, Fiscal Year 1979
Congressional Submission

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Rights Protection:

To meet all challenges of tribal rights and interests protected by treaty, statute or executive order, and initiate whatever action that might be necessary to clarify, to make more firm, the nature of a protected right to ensure the continued viability of that right; to establish financial ability to become involved in those issues, regardless of how many, properly identified as rights protection issues; to fund all those activities required to fulfill our obligations to the tribes and mandated by our trust responsibility; to resolve all unresolved rights issues in the shortest possible time; to accomplish all water inventories still pending. To bring potentially contesting parties together on a broad scale to consider Indian rights issues in a national setting, and to seek and explore areas of common interests and goals. *To provide sufficient funds for rights issues resolution, litigation, and attorneys fees.*

Base Program

Environmental Quality:

The National Environmental Policy Act of 1969, and various regulations, require the preparation and submission of environmental impact statements when a proposed action or activity is determined to be a major federal action having significant effect on the quality of the human environment. In response to that direction, the Bureau conducts the following activities:

Proposed actions are examined to identify those potentially within the perview of NEPA.

Upon investigations, an environmental assessment is prepared and a determination is made as to each action's environmental significance. When actions are determined to be significant, an environmental impact statement is prepared and processed.

Statements of other Federal agencies are reviewed, tribal consultation obtained as necessary, and comments provided.

As trust agent for Indian rights and interests, the Bureau coordinates with tribal organizations involved and with interrelated agencies, all actions affecting Indian interests.

The following workload factors are indicated in the environmental program:

	1976	TQ	1977	1978	1979
Environmental examinations	38,472	12,000	50,000	48,000	48,000
Environmental assessments	845	175	700	720	700
Environmental impact statements	1	1	6	8	8
Environmental consultations	1,308	400	1,500	1,500	1,500
Environmental reviews	458	110	450	450	430

Rights Protection:

The rights protection activity provides the Bureau of Indian Affairs with the problem-solving staff and technical support services required in the administration of the multi-billion dollar estate which the United States administers in behalf of the nation's Indian tribes. This includes the support necessary to meet all challenges to tribal rights and interests that are protected by treaty, statute, or executive order, as well as the initiation of those actions required of a prudent trustee to clarify the nature of and to ensure the continued viability of those rights. This activity funds those studies and actions

needed to preserve and protect Indian water rights, including water inventories, because, while Indian water rights are vested and protected by the 5th Amendment to the Constitution, these rights are largely unquantified.

APPENDIX E

Decision dated May 30, 1975, Expenditures for the legal expenses of Indian tribes, The Comptroller General of the United States, Washington, D.C.

DECISION

[SEAL]

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-114868 DATE: May 30, 1975

MATTER OF: Expenditures for legal expenses of Indian tribes

DIGEST: Snyder Act, 25 U.S.C. § 13, provides discretionary authority for Secretary of the Interior to pay for attorney's compensation and expenses incurred by Indian tribes from appropriations for purposes of improving and protecting resources under jurisdiction of Bureau of Indian Affairs, if Indians have insufficient funds to obtain such services.

This decision to the Secretary of the Interior is in response to a request of the Solicitor, Department of the Interior, by letter dated November 27, 1974 (together with enclosures), for our decision regarding authorization for expenditures to pay for attorney's fees incurred by Indian tribes.

The Solicitor cited the Secretary of the Interior's decision of June 4, 1974, regarding a Northern Cheyenne Tribe petition as one situation raising the question of authority to pay for tribal legal expenses. In that decision the Secretary granted part of a petition by the Tribe to withdraw departmental approval of leases and permits to stripmine coal on the Northern Cheyenne Reservation, denied part of the petition, referred some questions to an administrative hearing and held others in abeyance. The

Secretary stated in the decision that he would support the tribe in a lawsuit against the coal companies or a request that the Justice Department under 25 U.S.C. § 175 (1970) bring a suit in the name of the Tribe to test the validity of the permits and leases. Because of "extraordinary circumstances," including the substantial sums of money expended in presenting the petition, the Secretary stated that:

> "* * * to the fullest extent permitted by my statutory authority, I will defray the expenses to be subsequently borne by the Tribe for attorney's fees and other costs in the administrative proceeding I have directed to take place and in any litigation it now wishes to commence against the companies."

There is mentioned in the enclosure with the Solicitor's letter the case of *Pyramid Lake Paiute Tribe of Indians* v. *Morton*, 499 F.2d 1095 (D.C. Cir. 1974). The United States Court of Appeals for the District of Columbia reversed a district court decision (360 F.Supp. 669 (D.D.C. 1973)) awarding attorney's fees and expenses to an Indian tribe which had successfully challenged regulations promulgated by the Secretary of the Interior. The district court had ruled that in view of 25 U.S.C. §§ 175 and 476, the provisions in 28 U.S.C. § 2412 excluding the award of attorney's fees in cases arising out of suits against Government officials did not bar the tribe from making claim for attorney's fees arising from a suit which was founded on the contention that the Secretary had breached a trust owed to the tribe. The Court of Appeals citing *United States* v. *Gila River Pima-Maricopa Indian Community, infra*, held that the district court's discernment of the cited statutory authority to award attorney's fees was in error and in the absence of a statute expressly authorizing the award of legal fees and expenses against the United States, the district court was without authority to do so. The Solicitor attached to his letter corre-

spondence from Members of the Senate Judiciary Committee urging the Secretary to settle the controversy in *Pyramid Lake* by using appropriated funds to satisfy the original award.

In light of these two situations, the Solicitor asks if the Secretary of the Interior is authorized to pay tribal legal expenses including attorney's fees from appropriated funds in cases where (1) the Government is not an adverse party, (2) where the Government is potentially in an adversary role and (3) where the Government may be brought into the matter as an essential party.

Legal representation may be provided to Indians by a United States attorney pursuant to 25 U.S.C. § 175 (1970), which provides that—

> "In all States and Territories where there are reservations or allotted Indians the United States attorney shall represent them in all suits at law and in equity."

This duty has been construed as a discretionary one, and the Attorney General has been held to have properly refused to represent tribes in cases presenting a conflict of interest where the United States was a party and where it was not. *Siniscal* v. *United States*, 208 F.2d 406, 410 (9th Cir. 1953), *cert. denied*, 348 U.S. 818 (1954); *United States* v. *Gila River Pima-Maricopa Indian Community*, 391 F.2d 53, 56 (9th Cir. 1968); *Rincon Band of Mission Indians* v. *Escondido Mutual Water Company*, 459 F.2d 1082, 1085 (9th Cir. 1972); *Salt River Pima-Maricopa Indian Community* v. *Arizona Sand and Rock Company*, 353 F. Supp. 1098, 1100 (D. Ariz. 1972).

In cases in which the Attorney General declines to provide representation, Indian tribes are authorized to employ counsel at their own expense, the choice of counsel and fixing of fees being subject to approval of the Secre-

tary of the Interior. 25 U.S.C. §§ 476, 81-82a. Funds for the compensation and expenses of attorneys so employed have been regularly appropriated by Congress (in the Department's annual appropriation acts) from tribal trust funds. See, *e.g.*, Department of the Interior and Related Agencies Appropriation Act, 1975, Pub. L. No. 93-404, 88 Stat. 803, 811.

The basic statutory authority for expenditure of funds appropriated for the benefit of Indians is found in the Snyder Act, ch. 115, 42 Stat. 208 (1921), 25 U.S.C. § 13 (1970), which provides as follows:

> "The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:
>
> "General support and civilization, including education.
>
> "For relief of distress and conservation of health.
>
> * * * *
>
> "And for general and incidental expenses in connection with the administration of Indian affairs."

The Senate report accompanying H.R. 7848, 67 Congress (enacted as the Snyder Act), set forth the following explanation of the necessity for passage of the bill as contained in a letter from the Acting Secretary of the Interior (S. Rep. No. 294, 67th Cong., 1st Sess. (1921):

> "While the Indian appropriation bill for the fiscal year 1922 was under consideration in the House of Representatives points of order were made and sustained on a number of items appearing in the bill because of the fact that there was no basic law authorizing such appropriations.

> "Section 463 of the Revised Statutes provides that 'The Commission of Indian Affairs shall * * * have the management of all Indian affairs and all matters arising out of Indian relations.' This law was enacted July 9, 1832. As treaties were made with various tribes and reservations set aside for them, the Indian problem became more complicated, and numerous activities have been undertaken in order to more speedily bring about the civilization of the Indian tribes of the United States. There has been no specific law authorizing many of the expenditures for the benefit of the Indians. Congress, however, has continued to make appropriations to carry on the activities of the Indian Service.
>
> "In view of the fact that there is no basic law at the present time authorizing many of the items appearing in the annual Indian appropriation act, and the further fact that the bill in question would give Congress authority to appropriate for the expenses of the Indian Service for all necessary activities, it is recommended that H.R. 7848 be enacted into law."

See also 61 Cong. Rec. 4659-4672 (1921). The Supreme Court in commenting on the above-quoted provisions of the Snyder Act has stated, "[t]his is broadly phrased material and obviously is intended to include all BIA activities." *Morton* v. *Ruiz*, 415 U.S. 199, 208 (1974).

While the legislative history of the Snyder Act contains few specific references to what Congress considered within the class of "all necessary activities" authorized, provisions for compensation and expenses of attorneys had been included in prior Indian Service appropriations. Although there apparently were appropriations for the payment of private attorneys in cases involving public lands (see Act of March 3, 1893, ch. 209, 27 Stat. 612, 631), generally the appropriations were for attorneys employed by the

Department (i.e. Government attorneys) to protect Indian property in matters such as probate and land claims. See, *e.g.*, the Act of March 3, 1921, ch. 119, 41 Stat. 1225, 1242, and the Act of July 1, 1898, ch. 545, 30 Stat. 571, 594 (substantially reenacted each year through the Act of February 17, 1933, ch. 98, 47 Stat. 820, 825). In 1934 legal services previously justified as line items in the budget of the Bureau of Indian Affairs operations (and as line items in Interior's annual appropriation act), were transferred to the Solicitor's Office under the Secretary and apparently provided for in a lump-sum in the appropriation for the Office of the Solicitor. See the Budget for fiscal year 1935, p. xxx of the President's message and pp. 256, 257, 266, and 267 of the Budget. *Cf.* p. 299 of the Budget for fiscal year 1934.

The Bureau of Indian Affairs has executed four contracts with Indian tribes providing for payment of the tribes legal expenses, including the fees of private attorneys, incurred by those tribes. (Contract Nos. K51C14200686, dated June 13, 1972; J50C14202332A, dated July 1, 1973; M00C 14201471, dated January 18, 1974; and A00C14202884, dated June 25, 1974.) Each of these contracts cites the Snyder Act as authority for the obligations. In a letter dated May 2, 1975, conveying copies of these contracts to our Office, the Associate Solicitor for General Law, Department of the Interior, stated that each of the contracts was entered into after a finding that the Indian tribes were unable to pay for the required services.

Appropriations for the operation of Indian programs are normally available for among other things "expenses necessary to provide * * * management, development, improvement, and protection of resources and appurtenant facilities under the jurisdiction of the Bureau of Indian Affairs." This appropriation is enacted in the form of a lump-sum with no specific limitations as to use. Thus, the

determination of what expenses are necessary for the stated purpose is left to the reasonable discretion of the Secretary.

Application to the courts has often been necessary for Indian communities to preserve their land, water and other resources. Because of the unique and pervasive relationship of the Federal Government to the Indians, the proper conduct of Government officials is frequently an issue in such litigation. The Secretary of the Interior could reasonably determine that providing legal expenses for an impecunious Indian tribe to pursue certain legal remedies is necessary for the improvement and protection of tribal resources, irrespective of whether the Government is or is not an adverse or essential party.

In light of the foregoing, and particularly the broad language and legislative history of the Snyder Act, as well as our obligation to liberally construe statutes passed for the benefit of Indians and Indian Communities (*Ruiz* v. *Morton*, 462 F. 2d 818, 821 (9th Cir. 1972), *aff'd mem.*, *Morton* v. *Ruiz*, *supra.*), it is our view that the Secretary of the Interior has the discretion to expend available appropriations to pay tribal legal expenses including attorney's fees where he determines it necessary to do so, subject to the limitations set forth below. In cases where the opposing party is not the United States, 25 U.S.C. § 175 (providing for representation by United States attorneys) would bar the use of appropriate funds, except in cases in which the Attorney General refused assistance or in which his assistance was not otherwise available. In this regard, we note that one of the contracts executed by BIA to pay (with appropriated funds) for Indian legal expenses provided for a Special Counsel to act for the San Pasquale Band of Mission Indians in litigation and agency proceedings where the United States Attorney was already representing the Band (Contract No. J50C14202332A, dated July 1, 1973), and, hence, in our

opinion was unauthorized. Similarly, we question the availability of appropriated funds to retain private attorneys to, in effect, review the Justice Department's preparation of the case involving the Northern Pueblo Tributary Water Rights Association. (Contract No. M00C 14201471, dated January 18, 1974.)

In light of congressional appropriations for attorneys fees from tribal trust funds, the practice of the Department in contracting to pay for such fees only where it was found that the Indians were unable to pay, and the obligation of the Secretary of the Interior to determine that it is necessary to pay such fees for the protection of Indian resources, it would seem appropriate that before such expenditures are made by the Secretary there be a finding that the Indians have insufficient funds to otherwise obtain those services. The Department's prior practice of obtaining specific authority for general legal assistance to Indians irrespective of their financial status (such as the appropriations to provide probate and land claim services cited above) is support for this position.

In view of the past practice of the Department, if the Secretary wishes to pay general legal expenses and attorneys fees for Indian tribes irrespective of their independent ability to pay, we recommend that he request Congress for specific authority and appropriations for such purpose.

The question presented is answered accordingly.

/s/ Elmer B. Staats
ELMER B. STAATS
Comptroller General
of the United States